UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

LACEY SMITH, et al.,	***)***	
	)	
Plaintiffs	***)***	
	)	
v.	***)***	***Docket No. 00-284-P-C***
	)	
MAINE SCHOOL ADMINISTRATIVE DISTRICT NO. 6, et al.,	***)***	
	)	
Defendants	***)***	

RECOMMENDED DECISION ON MOTIONS TO DISMISS

The individual defendants, Martha Corkery, Ansel Stevens and Linda Linnell, move pursuant to Fed. R. Civ. P. 12(b)(6) for dismissal of all claims asserted against them in their individual capacities in this action arising out of a school dance and school chorus concert. The other defendant, Maine School Administrative District No. 6 ("MSAD 6"), the employer of the individual defendants, moves for dismissal of Count III of the complaint. I recommend that the motions be granted in part and denied in part.

I. Applicable Legal Standard

"When evaluating a motion to dismiss under Rule 12(b)(6), [the court takes] the well-pleaded facts as they appear in the complaint, extending plaintiff[s] every reasonable inference in [their] favor." *Pihl v. Massachusetts Dep't of Educ.*, 9 F.3d 184, 187 (1st Cir. 1993). The defendants are entitled to dismissal for failure to state a claim upon which relief can be granted only if "it appears to a certainty that the plaintiff[s] would be unable to recover under any set of facts." *Roma Constr. Co.*

v. aRusso, 96 F.3d 566, 569 (1st Cir. 1996); *see also Tobin v. University of Maine Sys.*, 59 F.Supp.2d 87, 89 (D.Me. 1999).

II. Factual Background

The following allegations in the complaint are relevant to the disposition of the defendants' motions. Plaintiff Lacey Smith ("Lacey"), the daughter of plaintiffs David and Martha Smith, was at all relevant times a seventh grade student at Bonny Eagle Middle School, which is part of MSAD 6. Complaint (Docket No. 1) ¶¶ 2-4. Defendant Ansel Stevens was at all relevant times the principal of Bonny Eagle Middle School. *Id*. ¶ 5. Defendant Martha Corkery was at all relevant times the assistant principal of Bonny Eagle Middle School. *Id*. ¶ 6. Defendant Linda Linnell was at all relevant times the director of the Bonny Eagle Middle School seventh grade chorus. *Id*. ¶ 7. The individual defendants are sued in both their individual and their official capacities. *Id*. at 1 (caption).

In September 1998 Lacey entered the seventh grade at Bonny Eagle Middle School. *Id*. ¶ 13. She received a school identification card identifying her as a seventh grader, was assigned to a seventh-grade homeroom and received a set of materials welcoming her to the seventh grade. *Id*. Lacey is a multi-handicapped individual with mental retardation, attention deficit hyperactivity disorder and Cohen Syndrome. *Id*. ¶ 14. A Pupil Evaluation Team developed an Individualized Education Program ("IEP") for Lacey that provided for full inclusion in the education program and placement in the seventh grade "clan." *Id*. ¶ 15.

On or about October 9, 1998 the school scheduled a dance for all seventh graders. *Id*. ¶ 16. Lacey received written permission from an aide to her teacher to attend the dance. *Id*. ¶ 17. Her mother spoke to another aide to Lacey's teacher on the day of the dance and received assurance that Lacey would be well taken care of at the dance. *Id*. Not long into the dance, defendant Corkery told Lacey and three other special education students that they did not belong at the dance and would have

to accompany her to her office so that she could call their parents to come and pick them up. *Id*. ¶ 19. Corkery had been told by defendant Stevens that the students were sixth graders and had to leave. *Id*. Lacey and the other students told Corkery that they were seventh graders and had permission to be at the dance. *Id*. ¶ 20. Stevens and Corkery understood that the students were in a seventh grade "clan" or homeroom. *Id*. ¶ 21.

After some time, Corkery reached Martha Smith by telephone and told her that Lacey did not belong at the dance because she was a sixth grader. *Id*. ¶ 23. Mrs. Smith told Corkery that Lacey was a seventh grader and had permission to be at the dance. *Id*. ¶ 24. Corkery reiterated that Lacey could not stay at the dance. *Id*. When Mr. and Mrs. Smith arrived at the dance in response to Corkery's call, they again advised Corkery that Lacey was a seventh grader and showed her the permission slip from the aide. *Id*. ¶ 25. They asked Corkery and Stevens to allow Lacey to stay at the dance, her first. *Id.* ¶ 26. Stevens refused to allow the students to stay at the dance. *Id*. ¶ 27. As a result, Lacey was "made to feel that she was different," *id*. ¶ 29, and subjected to ridicule and severe emotional distress, *id*. ¶¶ 48, 56, 64, 67, 73, 80.

During the 1998-99 school year Lacey was a member of the seventh grade chorus at the school. *Id*. ¶ 32. On or about April 15, 1999 the chorus held a concert. *Id*. Lacey and one other special education student were unable to find places to sit in the section of the bleachers in which the chorus was instructed to sit because other students would not make room for them. *Id*. ¶ 33. Lacey and the other students were directed by a Ms. Jack to sit in the next set of bleachers away from the main chorus. *Id*. ¶ 34. After David Smith pointed out to Stevens that the special education students had been excluded from sitting with the rest of the chorus, Stevens directed the chorus students to make room for Lacey and the other student. *Id*. ¶ 35.

During the concert, while the chorus was singing, a student tapped Lacey on the shoulder and said something to her. *Id*. ¶ 36. Several students behind Lacey moved away from her during the song. *Id*. The student who tapped Lacey on the shoulder had been directed to do so by defendant Linnell when the student believed that Lacey was singing too loudly. *Id*. ¶ 37. As a result, Lacey was ridiculed by other students and "held out as different, inappropriate and unacceptable." *Id*.

III. Discussion

The complaint includes six counts. The individual defendants seek dismissal of the claims asserted against them in their individual capacities in Counts I, II and IV, dismissal of the claims asserted against them in Count III, and dismissal of the state-law claims asserted against them in Counts V and VI pursuant to 28 U.S.C. § 1367(c)(3). Motion of Defendants Martha Corkery, Ansel Stevens and Linda Linnell to Dismiss the Complaint, etc. ("Individual Defendants' Motion") (Docket No. 3) at 1, 14. Defendant MSAD 6 seeks dismissal of Count III. Motion of Defendant Maine School Administrative District No. 6 to Dismiss Count III of the Complaint, etc. ("MSAD 6 Motion") (Docket No. 4). The individual defendants do not address the assertion of claims against them in their official capacities.

A. Counts I, II and IV

Count I alleges violation of the Rehabilitation Act, 29 U.S.C. § 794. Complaint ¶¶ 10, 42-48. Count II alleges violation of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 *et seq.* Complaint ¶¶ 10, 49-56. Count IV alleges violation of the Maine Human Rights Act ("MHRA"), 5 M.R.S.A. § 4551 *et seq*. Complaint ¶¶ 10, 65-67. The individual defendants contend that these statutes do not allow actions against them in their individual capacities. Individual Defendants' Motion at 4-5.

The language of the Rehabilitation Act relevant to the plaintiffs' claims in this action provides:

> No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance . . . .

29 U.S.C. § 794(a). The section of the ADA invoked by the plaintiffs, Complaint ¶ 54, provides:

> Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

42 U.S.C. § 12132.

The majority of courts that have addressed the issue have held that neither the Rehabilitation Act nor the ADA permits claims against persons in their individual capacities. *E.g., Silk v. City of Chicago*, 194 F.3d 788, 797 n.5 (7th Cir. 1999) (both); *Alsbrook v. City of Maumelle*, 184 F.3d 999, 1005 n.8 (8th Cir. 1999) (ADA); *Hiler v. Brown*, 177 F.3d 542, 546-47 (6th Cir. 1999) (Rehabilitation Act); *Hallett v. New York State Dep't of Correctional Servs*., 109 F. Supp.2d 190, 199 (S.D.N.Y. 2000) (both); *Montez v. Romer*, 32 F. Supp.2d 1235, 1240-41 (D.Colo. 1999) (both); *Randolph v. Rodgers*, 980 F. Supp. 1051, 1060-61 (E.D.Mo. 1997) (both), *rev'd in part on other grounds* 170 F.3d 850, 854 n.4 (8th Cir. 1999). The plaintiffs cite two district court opinions that provide authority to the contrary, Plaintiffs' Opposition to Motion of Defendants Martha Corkery, Ansel Stevens, Jr., and Linda Linnell to Dismiss the Complaint, etc. ("Plaintiffs' Opposition") (Docket No. 10) at 7, but I find the brief, conclusory discussions in *Niece v. Fitzner*, 922 F. Supp. 1208, 1218-19 (E.D.Mich. 1996) (ADA), and *Chaplin v. Consolidated Edison Co. of New York*, 587 F. Supp. 519, 520-21 (S.D.N.Y 1984) (Rehabilitation Act),[1] to be unpersuasive. The individual defendants are entitled to dismissal of the claims against them in their individual capacities that are set forth in Counts I and II.

[1] The holding in *Chaplin* was specifically rejected in *Lane v. Maryhaven Ctr. of Hope*, 944 F. Supp. 158, 165 (E.D.N.Y. 1996).

The claim asserted in Count IV under the state statute requires closer consideration. The Law Court has not yet ruled on the question whether an individual may be held liable under 5 M.R.S.A. § 4602(2)(A), the section of the Maine Human Rights Act on which the plaintiffs rely. *See generally Gordan v. Cummings*, 756 A.2d 942, 945 (Me. 2000) (declining to rule on issue in employment context). That portion of the MHRA provides:

> It is unlawful educational discrimination in violation of this Act solely on the basis of physical or mental disability to:
>
> **A**. Exclude from participation in, deny the benefits of or subject to discrimination under any educational program or activity any otherwise qualified individual with physical or mental disability.

This court has held that there is no individual liability under another section of the MHRA, 5 M.R.S.A. § 4572, which prohibits discrimination in employment. *Quiron v. L. N. Violette Co.*, 897 F. Supp. 18, 20-21 (D. Me. 1995). The defendants contend that the reasoning in *Quiron* extends to a claim under section 4602 while the plaintiffs argue that the decision in that case was based on the MHRA's definition of "employer," 897 F. Supp. at 20, a term that has no relevance to the instant claim. The plaintiffs' position necessarily implies that individuals are liable for certain claims under the MHRA and not for others, a position somewhat anomalous on its face but not entirely without precedent in federal law concerning unlawful discrimination. *See, e.g., LaManque v. Massachusetts Dep't of Employment & Training*, 3 F. Supp.2d 83, 90 (D. Mass. 1998) (individuals liable on claims of unlawful retaliation under ADA); *but see Baird v. Rose*, 192 F.3d 462, 471-72 (4th Cir. 1999) (contra).

The Law Court has provided some direction for those cases in which federal anti-discrimination statutes are cast in terms that parallel the language of the MHRA. In such circumstances, it is appropriate to use "federal precedent as an aid in interpreting Maine's anti-discrimination provisions." *Bowen v. Department of Human Servs.*, 606 A.2d 1051, 1053 (Me.

1992). The operative language of section 4602 and the quoted sections of the ADA and the Rehabilitation Act is strikingly similar. Accordingly, I conclude that the individual defendants cannot be held liable under section 4602 in their individual capacities and are entitled to dismissal of Count IV to the extent that it seeks to impose such liability.

B. Count III

The defendants contend that they are entitled to dismissal of this claim under 42 U.S.C. § 1983 on several grounds. The complaint asserts liability based on the constitutional guarantees of equal protection and due process of law, the Rehabilitation Act, the ADA, the Individuals with Disabilities Education Act ("IDEA") (20 U.S.C. § 1400 *et seq*.), and the MHRA. Complaint ¶¶ 60-62. In their opposition to the motion, the plaintiffs concede that dismissal of this claim is appropriate insofar as it relies on the state statute and any alleged due process violation. Plaintiffs' Opposition at 5 n.2. Those claims accordingly will not be considered further.

The federal statute at issue provides, in relevant part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . ., subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law . . . .

42 U.S.C. § 1983.

The defendants contend that the plaintiffs may not assert claims under section 1983 that are based on alleged violations of the Rehabilitation Act and the ADA because Congress has already provided a comprehensive enforcement scheme within those acts. Individual Defendants' Motion at 11-13; MSAD 6 Motion at 2. "When the remedial devices provided in a particular Act are sufficiently comprehensive, they may suffice to demonstrate congressional intent to preclude the remedy of suits under § 1983." *Middlesex County Sewerage Auth. v. National Sea Clammers Ass'n*,

453 U.S. 1, 20 (1981). "The *Sea Clammers* doctrine holds that congressional intent to preclude constitutional claims can be gleaned from the comprehensive nature of the remedial devices provided in a particular Act." *Nelson v. University of Maine Sys.*, 914 F. Supp. 643, 647 (D. Me. 1996); *see generally Doe v. School Admin. Dist. No. 19*, 66 F. Supp.2d 57, 65-66 (D. Me. 1999).

The courts that have addressed this issue with respect to the Rehabilitation Act and the ADA are not uniform in their holdings. The plaintiffs rely on *Ferguson v. City of Phoenix*, 931 F. Supp. 688, 698 (D. Ariz. 1996), *affirmed on other grounds*, 157 F.3d 668 (9th Cir. 1998), Plaintiffs' Opposition at 14, in which the court in turn relied on a dissenting opinion in *Madsen v. Boise State Univ.*, 976 F.2d 1219, 1225 (9th Cir. 1992), and several district court opinions addressing the Rehabilitation Act in holding that a party seeking to bar a section 1983 claim based on either the Rehabilitation Act or the ADA must show an express provision in each statutory scheme demonstrating congressional intent to preclude such relief, or other "specific evidence" in the statute itself. *See also W.B. v. Matula*, 67 F.3d 484, 494 (3d Cir. 1995) (plaintiffs may raise § 1983 claim based on Rehabilitation Act). In contrast, other courts of appeals have held that the comprehensive remedial schemes of these statutes do bar relief under section 1983. *E.g., Alsbrook*, 184 F.3d at 1010-12 (ADA); *Holbrook v. City of Alpharetta*, 112 F.3d 1522, 1530-31 (11th Cir. 1997) (both). I find the reasoning of the latter courts to be persuasive. Both the Rehabilitation Act and the ADA provide comprehensive remedial schemes sufficient to meet the *Sea Clammers* test. The defendants are entitled to dismissal of any claims asserted in Count III based on the Rehabilitation Act and the ADA.[2]

[2] Even if this were not the case, the individual defendants are entitled to dismissal of such claims. Persons not amenable to suit under the statutes on which a section 1983 claim is based may not be sued on that basis under section 1983. *Alsbrook*, 184 F.3d at 1011-12; *Huebschen v. Department of Health & Soc. Servs.*, 716 F.2d 1167, 1170-71 (7th Cir. 1983). I have already determined that the individual defendants may not be sued in that capacity under the Rehabilitation Act and the ADA.

The defendants do not address the section 1983 claim to the extent that it is based on the IDEA in their initial memoranda of law, although the individual defendants do mention that statute.[3] Individual Defendants' Motion at 11. In response to the plaintiffs' separate argument concerning this statute, they rely on *Andrew S. v. School Comm. Of the Town of Greenfield*, 59 F. Supp.2d 237 (D. Mass. 1999), to support their contention that a plaintiff may not pursue a claim based on the IDEA through section 1983. Reply Brief of Defendants Martha Corkery, Ansel Stevens, Jr., and Linda Linnell in Support of Motion to Dismiss (Docket No. 11) at 4. In *Andrew S.*, the court noted that the Second, Third and Fifth Circuits have held that section 1983 may be invoked to obtain redress for violations of the IDEA, while the Fourth and Eighth Circuits have held to the contrary. 59 F. Supp.2d at 242-43. The Seventh and Tenth Circuits also belong to the latter group. *Marie O. v. Edgar*, 131 F.3d 610, 622 (7th Cir. 1997); *Padilla v. School Dist. No. 1*, 233 F.3d 1268, 1273 (10th Cir. 2000). The plaintiffs cite recent district court opinions in support of their position. Plaintiffs' Opposition at 13-14. This issue presents a closer question than that presented by the claims under the Rehabilitation Act and the ADA due to the presence in the IDEA of language not present in the other statutes, upon which the courts finding that a section 1983 action is available for

[3] The fact that the plaintiffs have chosen not to assert a claim directly under the IDEA in this action has no bearing on this analysis.

alleged violations of the IDEA have relied. Specifically, that statutory subsection provides:

> Nothing in this chapter shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this subchapter, the procedures under subsections (f) and (g) of this section shall be exhausted to the same extent as would be required had the action been brought under this subchapter.

20 U.S.C. § 1415(*l*). *See, e.g., Butler v. South Glens Falls Cent. Sch. Dist.*, 106 F. Supp.2d 414, 420 (N.D. N.Y. 2000). I have reviewed the decisions of the circuit courts that have ruled on this issue. In addition to *Padilla, Edgar* and *Matula*, they include *Sellers v. School Bd. of City of Manassas*, 141 F.3d 524, 529 (4th Cir. 1998) (no § 1983 claim based on IDEA); *Heidemann v. Rother*, 84 F.3d 1021, 1033 (8th Cir. 1996) (same); *Angela L. v. Pasadena Indep. Sch. Dist.*, 918 F.2d 1188, 1193 n.3 (5th Cir. 1990) (IDEA claim allowed under § 1983); and *Mrs. W. v. Tirozzi*, 832 F.2d 748, 755 (2d Cir. 1987) (same). I find persuasive the extensive analyses of the Tenth Circuit in *Padilla* and the district court in *Andrew S.* In particular, although certainly not exclusively, I note Judge Ponsor's observation in *Andrew S.* that the language of section 1415(*l*)[4] refers to federal statutes "protecting the rights of children with disabilities," which section 1983 does not specifically do. 59 F. Supp.2d at 244.[5]

The defendants are entitled to dismissal of any claims in Count III that are based on alleged violations of the IDEA.

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[4] The *Andrew S*. opinion refers to section 1415(f) as the source of the quoted language. 59 F. Supp.2d at 244. Language essentially similar to that now present in section 1415(*l*) appeared in section 1415(f) prior to a 1997 amendment of the statute. *See* 20 U.S.C.A. § 1415, Historical and Statutory Notes.

[5] In addition, the complaint fails to allege that the plaintiffs have complied with the requirements of 20 U.S.C. § 1415(f) and (g), as required by section 1415(*l*).

The only claim remaining for consideration in connection with Count III is the allegation of an equal protection violation. A plaintiff who "asserts that governmental action violates the Equal Protection Clause must show that he or she is the victim of intentional discrimination." *Judge v. City of Lowell*, 160 F.3d 67, 75 (1st Cir. 1998) (internal quotation marks omitted). "[T]he element of illegal motive must be pleaded by alleging specific non-conclusory facts from which such a motive may reasonably be inferred, not merely by generalized asseveration alone." *Id*. at 72. The defendants correctly point out that mental retardation is not a suspect or quasi-suspect classification calling for strict scrutiny under the equal protection clause, *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 442 (1985), and that Lacey had no constitutional right to participate in extracurricular school activities, *see Palmer v. Merluzzi*, 868 F.2d 90, 96 (3d Cir. 1989); *Hebert v. Ventetuolo*, 638 F.2d 5, 6 (1st Cir. 1981). However, the inquiry does not end there.

The plaintiffs have alleged that the defendants' actions were intentional and based on Lacey's disabilities. Complaint ¶¶ 39, 54, 55, 61, 66. Construed as a whole, the complaint includes the necessary specific, nonconclusory factual allegations that could reasonably give rise to an inference of discriminatory intent based on Lacey's disability. *Judge*, 160 F.3d at 75. When no suspect classification or fundamental right is involved in an equal protection claim, a court must apply the rational basis level of scrutiny to the claim; under such scrutiny, "a classification will withstand a constitutional challenge as long as it is rationally related to a legitimate state interest and is neither arbitrary, unreasonable nor irrational." *LCM Enters., Inc. v. Town of Dartmouth*, 14 F.3d 675, 679 (1st Cir. 1994). The complaint provides sufficient factual allegations to allow a court or jury to determine whether such a classification was made in this case and, if so, whether it can survive the rational basis level of scrutiny. Nothing further is necessary at this stage of the proceeding. The

defendants are not entitled to dismissal of Count III insofar as that count is based on an alleged equal protection violation.

C. Qualified Immunity

Because I have determined that the plaintiffs' Count III claim based on an alleged equal protection violation remains viable, it is necessary to address the individual defendants' assertion that they are protected from such a claim by the doctrine of qualified immunity. "[G]overnment officials performing discretionary functions, generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). A claim of qualified immunity is appropriately considered in connection with a motion to dismiss. *E.g., El Dia, Inc. v. Rossello*, 165 F.3d 106, 108-09 (1st Cir. 1999).

In opposing the individual defendants' contention that they are entitled to this qualified immunity, the plaintiffs rely solely on Lacey's asserted rights under the IDEA, the Rehabilitation Act and the ADA. Plaintiffs' Opposition at 16-17. However, the only remaining claim against the individual defendants in their individual capacities to which their invocation of the doctrine of qualified immunity would apply, if my recommendation is accepted by the court, is one of a constitutional violation. The plaintiffs' failure to address this claim in the context of the assertion of qualified immunity by the individual defendants means that they have waived any opposition to the invocation of that doctrine for this purpose. *Graham v. United States*, 753 F.Supp. 994, 1000 (D. Me. 1990). The individual defendants are accordingly entitled to dismissal of the claim raised in Count III based on an alleged equal protection violation by virtue of their unopposed qualified immunity defense.

D. Counts V and VI

The individual defendants contend that the plaintiffs' state-law claims, set forth in Counts V and VI, should be dismissed pursuant to 28 U.S.C. § 1367(c)(3). Individual Plaintiffs' Motion at 14. Section 1367(a) of Title 28 of the United States Code gives the federal district courts supplemental jurisdiction over claims "that are so related to claims in the action within [their] original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." Pursuant to subsection (c) of that section,

> [t]he district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if —
>
> **(1)** the claim raises a novel or complex issue of State law,
>
> **(2)** the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
>
> **(3)** the district court has dismissed all claims over which it has original jurisdiction, or
>
> **(4)** in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

28 U.S.C. § 1367(c). Here, while I have recommended dismissal of all claims asserted against the individual defendants in their individual capacities, these defendants have not sought dismissal of the claims asserted against them in their official capacities, and several claims remain against MSAD 6. If my recommendation is adopted, the court cannot be said to have dismissed all claims over which it has original jurisdiction. The individual defendants do not invoke any of the other statutory bases for the court's discretionary decision to decline to exercise supplemental jurisdiction over the state-law claims asserted against them in Counts V and VI.[6] Under these circumstances, the interests of judicial economy, convenience and fairness would best be served by retaining jurisdiction in this court over the remaining claims against the individual defendants. *See Harrison v. Indosuez*, 6 F.Supp.2d 224, 234-35 (S.D.N.Y. 1998).

IV. Conclusion

For the foregoing reasons, I recommend that the motion of defendants Corkery, Stevens and Linnell to dismiss be **GRANTED** as to all claims asserted against them in their individual capacities in Counts I-IV and otherwise **DENIED**; and that the motion of defendant Maine School Administrative District No. 6 to dismiss Count III be **GRANTED** as to all claims based on any statute and on the constitutional doctrine of due process and otherwise **DENIED**.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Date this 29th day of January, 2001.

David M. Cohen
United States Magistrate Judge

MARTHA SMITH, Individually and as Parent and Next Friend of Lacey Smith
plaintiff

RONALD W. SCHNEIDER, JR., ESQ.
[COR LD NTC]
BERNSTEIN, SHUR, SAWYER, & NELSON
100 MIDDLE STREET
P.O. BOX 9729

[6] Count VI is asserted only against MSAD 6 and Stevens. Complaint ¶¶ 74-80.

	PORTLAND, ME 04104-5029 207-774-1200
DAVID SMITH, Individually and as Parent and Next Friend of Lacey Smith plaintiff	RONALD W. SCHNEIDER, JR., ESQ. (See above) [COR LD NTC]
v.	
MAINE SCHOOL ADMINISTRATIVE DISTRICT NO 6 defendant	MELISSA A. HEWEY 772-1941 [COR LD NTC] DRUMMOND, WOODSUM & MACMAHON 245 COMMERCIAL ST. P.O. BOX 9781 PORTLAND, ME 04101 207-772-1941
MARTHA CORKERY, Individually and in Her Official Capacity as Administrator for MSAD No. 6 defendant	MELISSA A. HEWEY (See above) [COR LD]
ANSEL STEVENS, JR, Individually and in His Official Capacity as	MELISSA A. HEWEY (See above) [COR LD]

Proceedings include all events.
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STNDRD Administrator for MSAD No. 6 defendant	
LINDA LINNELL, Individually and in Her Official Capacity as Teacher for MSAD No. 6 defendant	MELISSA A. HEWEY (See above) [COR LD]